

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL NO. 1:00CV32

H. DEAN ALLISON, <i>et al.</i>,)	
)	
Plaintiffs,)	
)	
This document pertains to:)	
WILLIAM M. GADDY, SR., and wife)	
MYRTLE GADDY,)	
)	
vs.)	<u>ORDER OF</u>
)	<u>DISMISSAL</u>
DANIEL CONSTRUCTION COMPANY,)	
INC., <i>et al.</i>,)	
)	
Defendants.)	
_____)	

THIS MATTER is before the Court *sua sponte* to dismiss this action as to the Plaintiff William M. Gaddy, Sr., Deceased, for failure to prosecute.

On July 8, 2008, the Court permitted Plaintiff's counsel to withdraw.

See Order, filed April 2, 2008. In her motion to withdraw, Plaintiff's counsel advised the Court that she had repeatedly contacted the Decedent's family to establish an estate after his death in March 2007.

See Motion to Withdraw as Counsel of Record, filed June 16, 2008, ¶¶

2, 3. Plaintiff's counsel advised family members of the "consequences of

failing to establish an estate” and these family members “indicated verbally that the consequences of not establishing an estate were understood.” *Id.*

¶ 3. No response to the motion to withdraw was received from Decedent’s family members and the Court allowed counsel’s motion. **See Order, *supra*.**

In the same Order, the Court directed Decedent’s family members, William Gaddy, Jr., and/or Mrs. Myrtle Gaddy to take appropriate action to prosecute the claims filed herein and to do so within 30 days of entry of the Order. *Id. at 2.* To date, no response, either *pro se* or through counsel, has been received from either Mr. Gaddy, Jr., or Mrs. Myrtle Gaddy. Therefore, the Court finds that the Plaintiff, by the inaction of his surviving relatives, has abandoned his claims herein, failed to prosecute this action, and the claims should be summarily dismissed. **See Fed. R. Civ. P. 41(b) (providing that a dismissal for failure to prosecute “operates as an adjudication on the merits”); *Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989) (sanctioning dismissal under Rule 41(b) for failure to respond to a specific directive of the Court.).**

IT IS, THEREFORE, ORDERED that the claims of William M. Gaddy, Sr., Deceased, and wife Myrtle Gaddy, against all the Defendants herein are hereby **DISMISSED** in their entirety.

IT IS FURTHER ORDERED that the Clerk mail a copy of this Order of Dismissal to family members William Gaddy, Jr., and Mrs. Myrtle Gaddy, at the address of 204 East French Broad Street, Brevard, North Carolina, 28712.

Signed: August 20, 2008

A handwritten signature in black ink, appearing to read "Lacy H. Thornburg", written over a horizontal line.

Lacy H. Thornburg
United States District Judge

